

CALIFORNIA OFFICE OF ADMINISTRATIVE LAW  
SACRAMENTO, CALIFORNIA

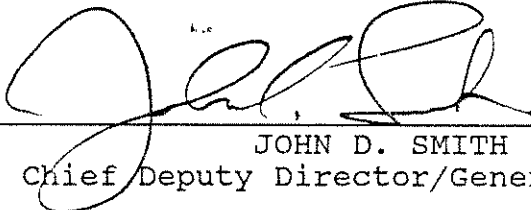
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MARCH FONG EU  
SECRETARY OF STATE  
OF CALIFORNIA

In re: ) 1987 OAL Determination No. 16  
Request for Regulatory )  
Determination filed ) [Docket No. 87-005]  
by Ruth H. Gordon, Ph.D., )  
concerning the Board of )  
Behavioral Science )  
Examiners' "Proposed )  
Regulations for Completed )  
Coursework or Training )  
in Child Abuse Assessment )  
and Reporting," and )  
"General Information"1 )  
December 4, 1987  
Determination Pursuant to  
Government Code Section  
11347.5; Title 1,  
California Administrative Code  
Chapter 1, Article 2

Determination by:

  
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SYNOPSIS

The issue presented to the Office of Administrative Law was whether the Board of Behavioral Science Examiners' rules concerning required training in child abuse assessment and reporting are "regulations" required to be adopted in compliance with the Administrative Procedure Act.

The Office of Administrative Law has concluded that the Board of Behavioral Science Examiners failed to comply with the APA in establishing rules and procedures that interpret or supplement the child abuse assessment statute. Most of these rules were, however, later adopted in accordance with the APA.

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## THE ISSUE PRESENTED

The Office of Administrative Law ("OAL") has been requested to determine whether the Board of Behavioral Science Examiners' ("Board") "Proposed Regulations for Completed Coursework or Training in Child Abuse Assessment and Reporting," and "General Information," (the "challenged rule") are "regulations" as defined in Government Code section 11342, subdivision (b), and are therefore invalid and unenforceable unless adopted as regulations and filed with the Secretary of State in accordance with the Administrative Procedure Act ("APA").

## THE DECISION 2, 3, 4, 5

1. The Office of Administrative Law finds that the following provisions of the challenged rule (1) are not "regulations" as defined in the APA, and therefore (2) are not subject to the requirements of the APA:
  - a. the first sentence of subdivision (a) of the challenged rule, which restates the substance of the first part of the third paragraph of Business and Professions Code section 28 concerning the general requirement of training in child abuse assessment and reporting;
  - b. the first sentence of subdivision (b) of the challenged rule, which restates the requirement of subdivision (e) of Business and Professions Code section 28, concerning documentation;
  - c. the fourth paragraph under "General Information," of the challenged rule, which restates subdivision (a) of Business and Professions Code section 28 by providing that training must be completed after January 1, 1983;
  - d. the seventh paragraph under "General Information" of the challenged rule, which restates the substance of subdivision (d) of Business and Professions Code section 28, describing the content of the coursework or training.
2. The Office of Administrative Law finds that the following provisions of the challenged rule (1) are subject to the requirements of the APA, (2) are "regulations" as defined in the APA, but (3) between the date of issuance of the challenged rule and the date of this Determination, were adopted as regulations and filed with the Secretary of State in accordance with the APA:
  - a. subdivision (a) of the challenged rule, redesignated as the first paragraph of the adopted rule, interpreting "contact" as used in subdivision (c) of Business and Professions Code section 28, to mean "classroom";

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- b. subdivision (a)(1) of the challenged rule, redesignated as subdivision (a) of the adopted rule, interpreting subdivisions (b)(1) and (b)(2) of Business and Professions Code section 28 concerning accreditation and approval of educational institutions;
  - c. subdivision (a)(2) of the challenged rule, redesignated as subdivision (b) of the adopted rule, interpreting subdivision (b)(4) of Business and Professions Code section 28 concerning courses offered by professional associations;
  - d. subdivision (a)(3) of the challenged rule, redesignated as subdivision (c) of the adopted rule, interpreting subdivision (b)(4) of Business and Professions Code section 28 concerning courses offered by governmental entities;
  - e. the challenged rule in its omission of any provision for providers of continuing education other than educational institutions, professional associations, and governmental entities.
3. The Office of Administrative Law finds that the following provisions of the challenged rule (1) are subject to the requirements of the APA, (2) are "regulations" as defined in the APA, and (3) are invalid and unenforceable unless adopted as regulations and filed with the Secretary of State in accordance with the APA:
- a. subdivision (b) and the first, second, third, and eighth (including "sample of necessary information") paragraphs under "General Information" of the challenged rule, providing for the occasion, manner, and substance of documentation;
  - b. the fifth paragraph under "General Information" of the challenged rule, in that it affirmatively eliminates the possibility of applicants being granted exemptions by the Board.

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I. AGENCY, AUTHORITY, APPLICABILITY OF APA; BACKGROUND

Agency

The Board of Social Work Examiners of the State of California was established within the Department of Professional and Vocational Standards in 1945. The Board was renamed "Social Worker and Marriage Counselor Qualification Board" in 1968. The Board was again renamed in 1970, as the "Board of Behavioral Science Examiners." The Board was placed within the Department of Consumer Affairs in 1971.<sup>6</sup>

The Board is responsible for the enforcement of laws relating to the practice of the professions of marriage, family, and child counselor, licensed educational psychologist, social worker, and licensed clinical social worker. In particular, the Board administers Business and Professions Code provisions concerning the granting, denying, suspending or revoking of professional licenses in these four professions.<sup>7</sup>

Authority <sup>8</sup>

Business and Professions Code section 28 provides in part:

"[T]he Board of Behavioral Science Examiners shall establish required training in the area of child abuse assessment and reporting for all persons applying for initial licensure and renewal of a license as a . . . clinical social worker, or marriage, family, and child counselor on or after January 1, 1987." [Emphasis added.]

Business and Professions Code section 4980.60 provides in part:

"The board may adopt those rules and regulations as may be necessary to enable it to carry into effect the provisions of this chapter. The adoption, amendment, or repeal of those rules and regulations shall be made in accordance with [the APA]." [Emphasis added.]

"[T]his chapter" refers to Chapter 13 of Division 2 of the Business and Professions Code, commencing with section 4980, governing marriage, family, and child counselors, and licensed educational psychologists.

Business and Professions Code section 4990.14 provides:

"The board may make such rules and regulations as may be necessary for the enforcement of this chapter and may by rule and regulation prescribe the qualifications for licensure." [Emphasis added.]

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"[T]his chapter" refers to Chapter 14 of Division 2 of the Business and Professions Code, commencing with section 4990, governing social workers, including licensed clinical social workers.

Applicability of the APA to Agency's Quasi-Legislative Enactments

The APA applies to all state agencies, except those "in the judicial or legislative departments."<sup>9</sup> Since the Board is in neither the judicial nor the legislative branch of state government, we conclude that APA rulemaking requirements generally apply to the Board.<sup>10</sup>

In any event, section 4980.60 of the Business and Professions Code (cited above) specifies that Board rulemaking concerning marriage, family, and child counselors is subject to the APA.

Background

The following undisputed facts and circumstances have given rise to the present determination.

The Legislature added section 28 to the Business and Professions Code, effective January 1, 1986. This law provides for " . . . minimal but appropriate training in the area of child abuse assessment and reporting" for all persons applying for an original license or renewal of license as a marriage, family, and child counselor or a licensed clinical social worker after January 1, 1987.

The Board sent the requester a document containing the "Proposed Regulations for Completed Coursework or Training in Child Abuse Assessment and Reporting," [emphasis added] and "General Information." These were enclosed with a letter dated January 6, 1987 attached as Appendix A. The letter provided in part:

"As a prerequisite to renewal of licensure after January 1, 1987, MFCC [Marriage, Family, and Child Counselor] and LCSW [Licensed Clinical Social Worker] licensees must comply with the required training in child abuse assessment and reporting as specified in Section 28 of the Business and Professions Code and Section 1807.2 of Title 16, California Administrative Code." [Emphasis added.]

At that time, section 1807.2 of Title 16, CAC, did not exist. It had not yet been formally adopted.<sup>11</sup> Although the challenged rule was clearly labeled "proposed," the "General Information" indicated:

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"MFCC's and LCSW's whose licenses expire on January 31, 1987, or thereafter, will have to document compliance with the above requirements in order to renew their licenses.

". . . . .

"All individuals who submit applications for licensure after January 1, 1987 will have to document compliance with the above requirements in order to be licensed."<sup>12</sup>

The question of premature enforcement of a proposed regulation is discussed in two earlier Determinations.<sup>13</sup>

Ruth H. Gordon, Ph.D. (a licensed marriage, family, and child counselor), submitted a Request for Determination to OAL on March 21, 1987. The subject of the Request is the document containing the Board of Behavioral Science Examiners' "Proposed Regulations for Completed Coursework or Training in Child Abuse Assessment and Reporting," and "General Information." A copy of this document was submitted as part of the Request.<sup>14</sup>

A revised version of Title 16, CAC, section 1807.2 was later adopted by the Board, approved by OAL, and filed with the Secretary of State, and became effective May 7, 1987. (Attached as Appendix C.) This version redesignated the separate paragraphs of the original challenged rule, deleted subdivision (b) concerning documentation, and added new subdivision (d) concerning the date of completion of training. The material designated "General Information" was not the subject of a rulemaking.

On October 28, 1987, the Board filed a Response to the Request with OAL. In this Response, the Board declared that:

"[P]rior to [May 7, 1987, the effective date of Title 16, CAC, section 1807.2] the board was enforcing Section 28 of the Business and Professions Code which became effective January 1, 1986. [Emphasis added.]

". . . . .

"Although the Legislature authorized the board to adopt regulations to implement Section 28, that section is, in fact, self-executing.

". . . . .

"The board was enforcing a self-executing statute and not its proposed regulations."<sup>15</sup>

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## II. DISPOSITIVE ISSUES

There are two main issues before us:<sup>16</sup>

- (1) WHETHER THE CHALLENGED RULES ARE "REGULATIONS" WITHIN THE MEANING OF THE KEY PROVISION OF GOVERNMENT CODE SECTION 11342.
- (2) WHETHER THE CHALLENGED RULES FALL WITHIN ANY ESTABLISHED EXCEPTION TO APA REQUIREMENTS.

FIRST, WE INQUIRE WHETHER THE CHALLENGED RULES ARE "REGULATIONS" WITHIN THE MEANING OF THE KEY PROVISION OF GOVERNMENT CODE SECTION 11342.

In pertinent part, Government Code section 11342, subdivision (b) defines "regulation" as:

" . . . every rule, regulation, order or standard of general application or the amendment, supplement or revision of any such rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure . . . ." [Emphasis added.]

Government Code section 11347.5, authorizing OAL to determine whether or not agency rules are "regulations," provides in part:

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"No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in subdivision (b) of Section 11342, unless the guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule has been adopted as a regulation and filed with the Secretary of State pursuant to this chapter . . . ." [Emphasis added.]

Applying the definition of "regulation" found in Government Code section 11342, subdivision (b), involves a two-part inquiry:

First, is the informal rule either

- o a rule or standard of general application or
- o a modification or supplement to such a rule?

Second, does the informal rule either

- o implement, interpret, or make specific the law enforced or administered by the agency or
- o govern the agency's procedure?

"Proposed Regulations for Completed Coursework or Training in Child Abuse Assessment and Reporting"

For an agency rule or standard to be "of general application" within the meaning of the APA, it need not apply to all citizens of the state. It is sufficient if the rule applies to all members of a class, kind or order.<sup>17</sup> The provisions of "Proposed Regulations for Completed Coursework or Training in Child Abuse Assessment and Reporting," are just such rules. The challenged rule by its own terms required any person, who wished to apply for a license, or renew a license, as a marriage, family, and child counselor or as a licensed clinical social worker, to comply with the rule, or be denied the license or renewal of license. Therefore, the provisions of the challenged rule are standards that are applied generally to all persons seeking to obtain or maintain licensure as marriage, family, and child counselors, or licensed clinical social workers. The rule implements, interprets, or makes specific the child abuse assessment training law administered by the Board.

The challenged rule is a rule of general application. Further, although certain provisions merely restate the substance of section 28 of the Business and Professions Code, others modify and supplement this statute.



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1. The following provisions of the challenged rule merely restate the substance of section 28:
  - a. the first sentence of subdivision (a) of the challenged rule, which restates the substance of the first part of the third paragraph of Business and Professions Code section 28, concerning the general requirement of training in child abuses assessment and reporting;
  - b. the first sentence of subdivision (b) of the challenged rule, which restates subdivision (a) of Business and Professions Code section 28, concerning documentation;
  - c. the fourth paragraph under "General Information" of the challenged rule, which restates subdivision (a) of Business and Professions Code section 28 by providing that training must be completed after January 1, 1983;
  - d. the seventh paragraph under "General Information" of the challenged rule, which restates subdivision (b) of Business and Professions Code section 28, describing the content of the coursework or training.
2. The following provisions of the challenged rule implement, interpret, and make specific the statute, but were subsequently adopted pursuant to the APA.

a. "Classroom" vs. "Contact"

Subdivision (c) of Business and Professions Code section 28 requires " . . . a minimum of 7 contact hours." The comparable language in the challenged rule requires " . . . 7 classroom hours . . . ." The rule interprets the meaning of the term "contact" to mean "classroom," and excludes other forms of training for this purpose.

b. Accreditation-Approval of Educational Institutions

Business and Professions Code section 28 provides in part:

"The training shall:

". . . . .

(b) Be obtained from one of the following sources:

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(1) An accredited or approved educational institution, as defined in Section 2902, including extension courses offered by those institutions.

(2) An educational institution approved by the Department of Education pursuant to Section 94310 of the Education Code."

The comparable language from the challenged rule provides:

"The coursework or training shall be:

(1) Obtained at an educational institution, or in an extension course offered by an institution which is accredited by the Western Association of Schools and Colleges, the Northwest Association of Secondary and Higher Schools, or an essentially equivalent accrediting agency as determined by the board or approved by the State Department of Education pursuant to Section 94310(b) of the Education Code."18

Business and Professions Code section 2902, which is referred in subdivision (a)(1) of Business and Professions Code section 28, provides in part:

"(d) 'Accredited,' as used with reference to an academic institution, means the University of California, the California State University, an institution accredited under the provisions of subdivision (a) of Section 94310 of the Education Code, or an institution located in another state which is accredited by a national or an applicable regional accrediting agency recognized by the United States Department of Education.

"(e) 'Approved,' as used with reference to academic institutions, means approved under the provisions of subdivision (b) of Section 94310 of the Education Code."

Former section 94310 of the Education Code has been restated and renumbered by Statutes 1986, chapter 665. The material formerly identified as subdivision (a) is now found at section 94310.1, subdivision (a). The material formerly identified as subdivision (b) is now found at section 94310.1, subdivision (b). The new version was in effect throughout 1987.

Subdivision (a) of section 94310.1 provides:

"The institution, which, at the time of the issuance of a degree, has accreditation of the

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institution, program, or specific course of study upon which the degree is based by a national accrediting agency recognized by the United States Department of Education, the Western Association of Schools and Colleges, or by the Committee of Bar Examiners for the State of California . . . ."

Subdivision (b) of section 94310.1 provides that post-secondary institutions outside of the state, and accredited by a regional accrediting agency recognized by the United States Department of Education at the time of degree issuance, and licensed by the California Superintendent of Public Instruction, may, subject to certain conditions, issue degrees.

The challenged rule interprets rather than merely restates the effect of the statute in the following areas:

The statute provides that the University of California and California State University are accredited. The challenged rule explicitly provides that training offered by these institutions will not be accepted unless there is compliance with other provisions of the challenged rule;

The statute provides for recognition of accreditation by agencies recognized by the United States Department of Education. The challenged rule explicitly provides that training will not be accepted based on such accreditation, unless there is compliance with other provisions of the rule;

The statute provides for recognition of accreditation by the Committee of Bar Examiners for the State of California. The challenged rule explicitly provides that such accreditation will not be accepted;

The statute does not provide for the approval of accrediting agencies by the Board of Behavioral Science Examiners. The challenged rule contains this provision;

The statute does not name the Northwest Association of Secondary and Higher Schools as an accrediting agency. The challenged rule contains this provision.

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c. Professional Associations as Course Providers

The challenged rule, subdivision (a)(2) provides:

"(a) . . . The coursework or training shall be:

". . . . .

(2) Obtained from a statewide professional association representing the professions of psychology, social work, or marriage, family and child counseling; . . ." [Emphasis added.]

The comparable language in Business and Professions Code section 28 provides:

" . . . The training shall:

". . . . .

(b) Be obtained from one of the following sources:

". . . . .

(4) A course sponsored or offered by a professional association . . . for continuing education and approved by the responsible board." [Emphasis added.]

Where the course work or training is offered by a professional association: the association must be "statewide" (emphasis added); the association must "represent the professions of psychology, social work or marriage, family, and child counseling" (emphasis added); the course must be "offered by," not merely "sponsored by" the association. None of these limitations appear in the statute.

d. Governmental Entities as Course Providers

Subdivision (b)(4) of Business and Professions Code section 28 provides in part:

" . . . The training shall:

". . . . .

(b) Be obtained from the following sources: . . .

". . . . .

(4) A course sponsored or offered by . . . a local, county, or state department of health or

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mental health for continuing education and approved by the responsible board." [Emphasis added.]

The comparable language from the challenged rule provides:

"(a) . . . The coursework or training shall be:

". . . . .

"(3) Obtained from or sponsored by a local, county, state or federal governmental entity." [Emphasis added.]

The Board has loosened the requirements for courses sponsored by governmental entities. The governmental entity need not be a "department of health or mental health" (emphasis added); federal governmental entities are allowed to give or sponsor courses.

e. Other Providers as Sources of Training

Subdivision (b)(3) of Business and Professions Code section 28 provides:

" . . . The training shall:

". . . . .

(b) Be obtained from the following sources:

". . . . .

(3) A continuing education provider approved by the responsible board or committee."

No provision is made in the challenged rule for this alternative source of training.

3. The following provisions of the challenged rule (1) are subject to the requirements of the APA, (2) are "regulations" as defined in the APA, and (3) are invalid and unenforceable unless adopted as regulations and filed with the Secretary of State in accordance with the APA:

a. Documentation requirements.

Subdivision (e) of Business and Professions Code section 28 provides:

"(e) All applicants shall provide the appropriate board with documentation of completion of the required child abuse training." [Emphasis added.]

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The challenged rule provides in part:

"(b) Every person applying for a license or licensed as a marriage, family and child counselor or clinical social worker shall submit documentation establishing that the applicant or licensee has completed the required training in child abuse assessment and reporting described in subdivision (a). Such documentation shall be submitted with the first application for licensure or license renewal which occurs after January 1, 1987."  
[Emphasis added.]

"General Information" continues:

"MFCC's and LCSW's whose licenses expire on January 31, 1987, or thereafter, will have to document compliance with the above requirements in order to renew their licenses.

"All individuals who submit applications for licensure after January 1, 1987 will have to document compliance with the above requirements in order to be licensed.

"Those who already have an application on file, or who submit an application prior to January 1, 1987, will be required to document compliance the first time they renew their license.

". . . . .

"Upon application for initial licensure or upon renewal, certificate of completion shall be sent to the Board for review to ensure that the requirements of Section 1807.2 (a) and (b) have been met. Certification of completion should contain the following information:

**"SAMPLE**

"This is to certify that \_\_\_\_\_  
(CSW)/(MFCC)/(MFCC/CSW Applicant) attended  
coursework/training in "Child Abuse Assessment and  
Reporting.  
Course was obtained at or sponsored by \_\_\_\_\_.  
The course was given on \_\_\_\_\_, consisted of \_\_\_\_\_  
contact hours and was presented by \_\_\_\_\_.  
This course/training complies with the requirements  
of Section 28 of the Business and Professions  
Code.

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Date \_\_\_\_\_ Signature \_\_\_\_\_  
Printed Name & Title \_\_\_\_\_.

"This is a sample of necessary information only, and should not be submitted as proof of completion of training."

Subdivision (b) and the first, second, third and eighth paragraphs under "General Information" (including the substance and content of the sample form) of the challenged rule supplement subdivision (e) of the statute by providing for the effective date for compliance with the statute, a certificate of completion, the contents of a certificate of completion, and the time at which the certificate of completion must be sent to the board.

b. Exemptions.

Neither that portion of the challenged rule identified as a proposed regulation, nor the later adopted formal regulation, directly addresses the question of exemptions; however, the fifth paragraph of the challenged rule (under "General Information") states:

"All licensees must comply with the required training in child abuse assessment and reporting. No licensee will be exempt from compliance with the provisions of Section 1807.2 (a) and (b) and Section 28 of the Code because all licensed marriage, family and child counselors and clinical social workers, regardless of the nature of their practice, are subject to the child abuse reporting laws." [Emphasis added.]

The comparable language of section 28 of the Business and Professions Code provides:

"The Psychological Examining Committee and the Board of Behavioral Science Examiners shall exempt any applicant who applies for an exemption from the requirements of this section and who shows to the satisfaction of the committee or board that there would be no need for the training in his or her practice because of the nature of that practice." [Emphasis added.]

The Board has materially interpreted the statute by determining that no exemptions will be given.

WE CONCLUDE THAT: (1) THE PROVISIONS OF THE CHALLENGED RULE DESCRIBED UNDER ITEM "1" ABOVE ARE NOT "REGULATIONS"; AND (2)

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THE PROVISIONS OF THE CHALLENGED RULE DESCRIBED UNDER ITEM "2, ARE "REGULATIONS", BUT BETWEEN THE DATE OF ISSUANCE OF THE RULE AND THE DATE OF THIS DETERMINATION, WERE DULY ADOPTED AS REGULATIONS; (3) THE PROVISIONS OF THE CHALLENGED RULE DESCRIBED UNDER ITEM "3" ABOVE, ARE "REGULATIONS".

SECOND, WE INQUIRE WHETHER THE CHALLENGED RULES FALL WITHIN ANY LEGALLY ESTABLISHED EXCEPTION TO APA REQUIREMENTS.

Certain activities of state agencies--for instance, certain uses of forms<sup>19</sup> --are not subject to the procedural requirements of the APA.<sup>20</sup> However, none of the recognized exceptions (set out in footnote 20) apply to the provisions of the challenged rule that have been found to be regulatory.

### III. CONCLUSION

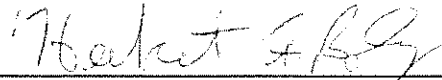
For the reasons set forth above, OAL finds that:

1. The provisions of the challenged rule identified under "Decision Item 1", above, are not "regulations", and therefore, are not subject to the requirements of the APA.
2. The provisions of the challenged rule identified under "Decision Item 2" (1) are subject to the requirements of the APA, (2) are "regulations" as defined in the APA, but (3) between the date of issuance of the challenged rule and the date of this Determination were adopted as regulations and filed with the Secretary of State in accordance with the APA.
3. The provisions of the challenged rule identified under "Decision Item 3," (1) are subject to the requirements of the APA, (2) are "regulations", and (3) are therefore invalid and unenforceable unless adopted as regulations and filed with the Secretary of State in accordance with the APA.

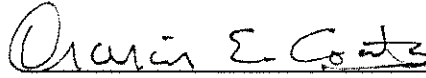


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- 1 This Request for Determination was filed by Ruth H. Gordon, Ph.D., Marriage, Family, and Child Counselor, 310 E. Riding Road, Montgomery, AL 36116, (205) 288-1537. The Board of Behavioral Science Examiners was represented by Anita Scuri, Esq., Office of Legal Affairs, Department of Consumer Affairs, 1020 N Street, Sacramento, CA 95814, (916) 445-4216.
- 2 As we have indicated elsewhere, an OAL determination concerning a challenged "informal rule" is entitled to great weight in both judicial and adjudicatory administrative proceedings. See 1986 OAL Determination No. 3 (Board of Equalization, May 28, 1986, Docket No. 85-004), California Administrative Notice Register 86, No. 24-Z, June 13, 1986, p. B-22; type-written version, pp. 7-8; Culligan Water Conditioning of Bellflower, Inc. v. State Board of Equalization (1976) 17 Cal.3d 86, 94, 130 Cal.Rptr. 321, 324-325. The Legislature's special concern that OAL determinations be given appropriate weight in other proceedings is evidenced by the directive contained in Government Code section 11347.5: "The office's determination shall . . . be made available to . . . the courts." (Emphasis added.)
- 3 No public comments were received concerning this Request for Determination. The Department submitted a formal Response to the Request for Determination and it was considered in making this Determination.  
  
In general, in order to obtain full presentation of contrasting viewpoints, we encourage affected agencies to submit responses. If the affected agency concludes that part or all of the challenged rule is in fact an underground regulation, it would be helpful, if circumstances permit, for the agency to concede that point and to permit OAL to devote its resources to analysis of truly contested issues.
- 4 An OAL finding that a challenged rule is illegal unless adopted "as a regulation" does not of course exclude the possibility that the rule could be validated by subsequent incorporation in a statute.
- 5 Pursuant to Title 1, CAC, section 127, this Determination shall become effective on the 30th day after filing with the Secretary of State.
- 6 The original predecessor of the Board of Behavioral Science Examiners was the Board of Social Work Examiners, within the Department of Professional and Vocational standards. (See Business and Professions Code section 9001, statutes 1945,

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chapter 1508.) The Board was renamed the Social Worker and Marriage Counselor Qualification Board in 1968. (See Business and Professions Code section 9001, statutes 1968, chapter 1348, section 1.) The Board was renamed again the Board of Behavioral Science Examiners in 1970. (See Business and Professions Code section 9001, statutes 1970 chapter 760. In 1971 the Board was placed within the Department of Consumer Affairs. (See Business and Professions Code section 9001, statutes 1971, chapter 716.)

- 7 See Division 2, Chapter 13 (Marriage, Family and Child Counselors), sections 4980-4988.2, and Chapter 14 (Social Workers), sections 4990-4998.7, of the Business and Professions Code.
- 8 We discuss the affected agency's rulemaking authority (see Gov. Code, section 11349, subd. (b)) in the context of reviewing a Request for Determination for the purposes of exploring the context of the dispute and of attempting to ascertain whether or not the agency's rulemaking statute expressly requires APA compliance. If the affected agency should later elect to submit for OAL review a regulation proposed for inclusion in the California Administrative Code, OAL will, pursuant to Government Code section 11349.1, subdivision (a), review the proposed regulation in light of the APA's procedural and substantive requirements.

The APA requires all proposed regulations to meet the six substantive standards of necessity, authority, clarity, consistency, reference, and nonduplication. OAL does not review alleged "underground regulations" to determine whether or not they meet the six substantive standards applicable to regulations proposed for formal adoption.

The question of whether the challenged rule would pass muster under the six substantive standards need not be decided until such a regulatory filing is submitted to us under Government Code section 11349.1, subdivision (a). At that time, the filing will be carefully reviewed to ensure that it fully complies with all applicable legal requirements.

Comments from the public are very helpful to us in our review of proposed regulations. We encourage any person who detects any sort of legal deficiency in a proposed regulation to file comments with the rulemaking agency during the 45-day public comment period. Such comments may lead the rulemaking agency to modify the proposed regulation.

If review of a duly-filed public comment leads us to conclude that a regulation submitted to OAL does not in fact satisfy an APA requirement, OAL will disapprove the regulation.

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(Gov. Code, sec. 11349.1.)

- 9 Government Code section 11342, subdivision (a). See Government Code sections 11343; 11346. See also 27 Ops.Cal.Atty.Gen. 56, 59 (1956).
- 10 See Poschman v. Dumke (1973) 31 Cal.App.3d 932, 943, 107 Cal.Rptr. 596, 609.
- 11 Following approval by OAL, it became effective May 7, 1987.
- 12 It is, of course, not improper for an agency to advise interested persons of planned regulatory changes. But care must be taken not to prematurely require compliance.
- 13 1987 OAL Determination No. 9, (Department of Corporations, June 30, 1987, Docket No. 86-015), California Administrative Notice Register 87, No. 29-Z, July 17, 1987, pp. B-37--B-39; typewritten version, pp. 15-16; 1987 OAL Determination No. 12, (California Community Colleges, September 22, 1987, Docket No. 87-001), California Administrative Notice Register 87, No. 42-Z, October 16, 1987, p. 416; typewritten version, p. 6.
- 14 See appendix to this determination.
- 15 Agency's Response, cover letter.
- 16 See Faulkner v. California Toll Bridge Authority (1953) 40 Cal.2d 317, 324 (point 1); Winzler & Kelly v. Department of Industrial Relations (1981) 121 Cal.App.3d 120, 174 Cal.Rptr. 744 (points 1 and 2); cases cited in note 2 of 1986 OAL Determination No. 1. A complete reference to this earlier Determination may be found in note 3 to today's Determination.
- 17 Roth v. Department of Veteran Affairs (1980) 110 Cal.App.3d 622, 167 Cal.Rptr. 552.
- 18 The challenged rule incorporates terms governing the accreditation and approval of educational institutions from Business and Professions Code section 4980.40. This section

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governs approval or accreditation of educational institutions offering training for licensure as a marriage, family, and child counselor generally. In doing so it omits the provisions of Business and Professions Code section 28, subdivisions (b)(1) and (b)(2) governing the approval or accreditation of educational institutions for offering training in child abuse assessment and reporting. Business and Professions Code section 4980.40 provides in part:

"To qualify for a license an applicant shall have all the following qualifications:

(a) Applicants applying for licensure on or after January 1, 1988, shall possess a doctor's or master's degree in marriage, family, and child counseling, marital and family therapy, psychology, clinical psychology, counseling psychology, counseling with an emphasis on marriage, family, and child counseling, or social work with an emphasis clinical social work, obtained from a school, college or university accredited by the Western Association of Schools and Colleges, the Northwest Association of Secondary and Higher Schools, or an essentially equivalent accrediting agency, as determined by the board, or approved by the Superintendent of Public Instruction, pursuant to subdivision (b) of Section 94310 of the Education Code. [Emphasis added.]

Subdivision (i) of Business and Professions Code section 4980.40 concerning applicants applying prior to January 1, 1988 contains language identical to that emphasized.

Section 4980.40 applies to marriage, family, and child counselors and licensed educational psychologists, but not to social workers, nor to licensed clinical social workers.

- 19 Use of forms by state government is an important public policy issue. In order to better understand the background of this issue, we will discuss (1) the legislative history of the APA forms provision, (2) pertinent case law, and (3) the treatment of the matter in the Model APA, and (4) other expressions of legislative intent in California, especially the State Records Management Act.

### Legislative History

The definition of "regulation" reached its present form, except for the forms language and the legal rulings of counsel language, in statutes 1947 chapter 1425. In 1955 the Attorney General issued an opinion interpreting then section 11371, subdivision (b) of the Government Code (later renumbered to 11342, subdivision (b) by Statutes 1979,

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chapter 576) as follows:

"If an agency adopts a particular form and intends that in every situation that arises the form is to be employed then we believe that the form is a standard of general application which implements the law to be administered by the agency and is therefore a regulation." (See 25 Attorney General's Opinions, page 241, 242-243, Opinion No. 54-219, April 8, 1955.)

The Legislature added the forms language to the definition of regulation by statutes 1957, chapter 916, as follows:

". . . 'Regulation' does not mean or include . . . any form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation upon any requirement that a regulation be adopted pursuant to this part when one is needed to implement the law under which the form is issued." (See Government Code section 11342, subsection (b).)

Case Law: Santa Barbara v. Coastal Zone and Stoneham v. Rushen

The forms language is discussed in two cases. The first is City of Santa Barbara v. California Coastal Zone (1977), 75 Cal.App.572, 580, 142 Cal.Rptr. 357. By statute the Coastal Commission was required to provide a form for appeals to the Coastal Commission following a Regional Commission's denial of a claim of exemption. The Coastal Commission provided the form, which was entitled "Appeal from Decision of Regional Commission on Permit Application." The form contained language interpretive of the filing requirements for the appeal. The court found that material not adopted in accordance with the APA could not be given regulatory effect, as an interpretation of the filing requirements, despite its being incorporated in a form.

The court stated:

"Respondent's reliance upon the above quoted 'Notice to Appellant' on the form utilized by petitioner to file its appeal is misplaced. The inclusion of such a notice on the form did not constitute the adoption of a regulation. (See Gov. Code sec. 11371, subd. (b).) The use of the form was not mandatory under the specific regulation governing appeals in exemption matters, even if the permit appeal form was the form 'provided by the Commission for this purpose.'"

The second case, Stoneham v. Rushen (1982) 137 Cal.App.3d 729, 737-738, 188 Cal.Rptr. 130, 135-136, involved the Department of Corrections use of a form which established a

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new means to "'classify [the prisoner] and determine the prison in which the [prisoner] shall be confined.'"

The court found:

"Nor, as alternatively contended, does the standardized scoring system fall within the statutory exemption relating to operational forms. The use of a standardized score sheet to achieve a classification formerly determined on a subjective basis brings about a wholly new and different scheme affecting the placement and transfer of prisoners. Consequently, such uniform substantive proposals contained in the administrative bulletins designed to implement the classification system must be promulgated in compliance with the Act." [Emphasis added.]

The case-law interpreting the forms language indicates:

- (1) embedding rules or interpretations within a form does not insulate the rule from the effect of the APA; and,
- (2) the use of a form resulting in a regulatory effect does not insulate the regulation from the effect of the APA.

#### The Model Act, Alaska APA, Bonfield

The Model State Administrative Procedure Act (MSAPA) of 1961 had no forms language exemption. The comments under this heading were drafted after the adoption of the California provision. They also address a Model Act of 1981 provision based on an Alaskan provision adopted subsequent to the California provision, and almost word for word identical to the California provision.

The Model State Administrative Procedure Act of 1981 contains an exemption for forms, as follows:

"Section 2-116. [Special Provision for Certain Classes of Rules]

Except to the extent otherwise provided by any provision of law, Sections 3-102 through 3-115 are inapplicable to:

". . . . .

- (7) a form whose contents or substantive requirements are prescribed by rule or statute, and instructions for the execution or use of the form." [See Model State Administrative Procedure Act (1981), section 3-116.]

The "Comment" states:

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"Exclusionary paragraph (7) is a modified form of Alaska Act, Section 44.66.640(a)(2); Wisconsin Act, Section 227.01(11)(q)."

The Alaska Administrative Procedure Act provides:

"[R]egulation does not include a form prescribed by a state agency or instructions relating to the use of the form, but this provision is not a limitation upon a requirement that a regulation be adopted under this chapter when one is needed to implement the law under which the form is issued; . . . " [See Alaska Statutes section 44.62.640(3), ch 143 SLA 1959.]

The Wisconsin Administrative Procedure Act provides:

"(13) . . . "Rule" does not include . . . any agency action, whether or not it would otherwise meet the definition under this subsection, which:

". . . . .

(q) Is a form the content or substantive requirements of which are prescribed by a rule or a statute." [See Wisconsin Administrative Procedure Act, section 227.01(13)(q).]

The similarity to the California language is striking.

Bonfield comments on the MSAPA (1981) provision as follows:

"Note that this provision governing forms does not exclude the adoption of a form from usual rule-making and rule-effectiveness procedures unless the contents and substantive requirements of that form are also independently prescribed by statute, or by another rule that was presumably adopted and made effective according to usual procedures. . . . " [Emphasis added.] [Bonfield, State Administrative Rulemaking, section 6.17.8, supplement page 418, Agency Adoption, Effectiveness, and Review of Rules, Forms Used by Agencies.]

The Alaska Administrative Procedure Act was adopted in 1959, and the Model Act issued in 1981. The Model Act provision on forms is based on the Alaska and Wisconsin provisions, and the Alaska Act provision on forms is almost identical to the California Act of 1957. The comments of the model act commenters, and of Bonfield, are directly applicable to the California language on forms.

The State Records Management Act



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The "State Records Management Law" in 1965 directed the director of the Department of General Services to establish a records management program to apply efficient and economical management methods to the creation, utilization, maintenance, retention, preservation, and disposal of state records. (See chapter 5.5, division. 3, Government Code, commencing with section 14740; see Government Code sections 14741, 14745, 14746, Statutes 1965, chapter 371.)

In 1975 the director was required to establish a "State Forms Management Program" for the orderly design, implementation and maintenance of a statewide forms management program. (See chapter 5.5, division 3, Government Code, commencing with section 14770; Statutes 1975, chapter 398 and following, page 875, section 1.)

In 1982 particular attention was directed to "information collection practices," and "public use forms." The director was required to:

"(a) Establish a State Forms Management Program for all state agencies, and provide assistance in establishing internal forms management capabilities." [Emphasis added; See Government Code section 14771; Statutes 1982, chapter 1118, section 4.]

At the same time, the head of each agency in state government was required to:

"(a) Establish and maintain an active, continuing program for the economical and efficient management of the records and information collection practices of the agency. The program shall ensure that the information needed by the agency shall be obtained with a minimum burden upon individuals and businesses especially small business enterprises and others required to furnish the information . . . ." [Emphasis added; See Government Code section 14750, subsection (a), Statutes 1982, chapter 1118, page 4042, section 3.]

The term "Public Use Forms" was defined:

"As used in this chapter, "Public Use Forms" means those forms used by the state to obtain or solicit facts, opinions, or other information from the public or private citizens, partnerships, corporations, organizations, business trusts, or any nongovernmental entity or legal representative thereof." [Emphasis added; See Government Code section 14741.1, Statutes 1982, chapter 1118, section 2.]

In the same act the Legislature amended the APA:

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"The agency officer, as designated in Section 11346.5, shall make available to the public upon request copies of any public use forms, as defined in Section 14741.1, which an agency anticipates using as a result of any proposed adoption, amendment, or repeal of a regulation." [Emphasis added; See Government Code section 11346.6, adopted Statutes 1982, chapter 1118, section 1.5; repealed Statutes 1987, chapter 1375, section 13.]

In 1984 the Legislature amended section 14760 to recognize the shift of the functions of the Department of General Services from the Department of Agriculture and General Services to the Department of General Services within the Department of Consumer Affairs. (See Government Code section 14760; Statutes 1984, chapter 144, section 123.)

In 1985 the Legislature again amended section 14771. In uncodified language of section 1. of the statute, the Legislature made the following findings and declaration of its intent:

"Section 1. The Legislature finds and declares all of the following:

- (a) There are between 100,000 and 150,000 government forms currently in use in California. Many of these forms are unnecessary and duplicative, as well as costly intrusions on private citizens and businesses, especially small businesses.
- (b) A central index of all public-use forms in use is the necessary first step and the key to a comprehensive paperwork reduction program.
- (c) Present state law, which required a central index and a complete and comprehensive inventory of public use forms in use, by January 1, 1984, has not been complied with or implemented.

Section 2. It is the intent of the Legislature to do all of the following:

- (a) Take steps to establish a comprehensive plan to minimize state paperwork burdens on individuals and businesses, especially small businesses.
- (b) Minimize the cost to the state of collecting, maintaining, using, and disseminating information.
- (c) Establish a means whereby public-use forms can

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be standardized, consolidated, simplified, designed, and procured economically, and manage efficiently by agencies. . . . " [See Statutes 1985, chapter 1263, section 1 and 2.]

The Legislature went on to require the Director of General Services to take specific steps toward control of forms in state government, including the following requirement:

"(a)(13) Establish a goal of reducing the existing burden of state collection of public information by 30 percent by July 1, 1987, and to reduce that burden by an additional 15 percent by July 1, 1988." [See Government Code section 14771 subsection (a)(13); Statutes 1985, chapter 1263, section 3.]

The Legislature expressed its intent with reference to forms imposed on small businesses in Government Code section 11346.53. Subdivision (f) was added in 1987.

"(a) If a state agency in proposing to adopt or amend any administrative regulation, determines that such action may have a significant adverse economic impact on small business, it shall include the following information in the notice of proposed action:

". . . . .

(2) A description of the projected reporting, recordkeeping and other compliance requirements that would result from the proposed action.

(3) The following statement: "The (name of agency) finds that the (adoption/amendment) of this regulation may have a significant adverse economic impact on small businesses. The (name of agency) (has/has not) considered proposed alternatives that would lessen any adverse economic impact on small business and invites you to submit such proposals. Submissions may include the following considerations:

(A) The establishment of differing compliance or reporting requirements or timetables which take into account the resources available to small businesses.

"(B) Consolidation or simplification of compliance and reporting requirements for small businesses.

". . . . .

(f) No administrative regulation which requires a report shall apply to small businesses, as defined in subdivision (e) of 11342, unless the state agency adopt-

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ing the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of this state that the regulations apply to small businesses. This subdivision applies only to administrative regulations adopted on or after January 1, 1988." [Emphasis added; See Government Code section 11346.53, Statutes 1987, chapter 1375, section 11.]

### Summary

The APA requires OAL to review regulations. The forms language does not create " . . . a limitation upon any requirement that a regulation be adopted pursuant to [the APA] when one is needed to implement the law under which the form is issued." (See Government Code section 11342, subdivision (b).)

- 20 The following provisions of law may also permit agencies to avoid the APA's requirements under some circumstances, but do not apply to the case at hand:
- a. Rules relating only to the internal management of the state agency. (Gov. Code, sec. 11342, subd. (b).)
  - b. Forms prescribed by a state agency or any instructions relating to the use of the form, except where a regulation is required to implement the law under which the form is issued. (Gov. Code, sec. 11342, subd. (b).)
  - c. Rules that "[establish] or [fix] rates, prices or tariffs." (Gov. Code, sec. 11343, subd. (a)(1).)
  - d. Rules directed to a specifically named person or group of persons and which do not apply generally or throughout the state. (Gov. Code, sec. 11343, subd. (a)(3).)
  - e. Legal rulings of counsel issued by the Franchise Tax Board or the State Board of Equalization. (Gov. Code, sec. 11342, subd. (b).)
  - f. Contractual provisions previously agreed to by the complaining party. City of San Joaquin v. State Board of Equalization (1970) 9 Cal.App.3d 365, 376, 88 Cal.Rptr. 12, 20 (sales tax allocation method was part of a contract which plaintiff had signed without protest); see Roth v. Department of Veterans Affairs (1980) 110 Cal.App.3d 622, 167 Cal.Rptr. 552 (dictum); Nadler v. California Veterans Board (1984) 152 Cal.App.3d 707, 719, 199

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Cal.Rptr. 546, 553 (same); but see Government Code section 11346 (no provision for non-statutory exceptions to APA requirements); see International Association of Fire Fighters v. City of San Leandro (1986) 181 Cal.App.3d 179, 182, 226 Cal.Rptr. 238, 240 (contracting party not estopped from challenging legality of "void and unenforceable" contract provision to which party had previously agreed); see Perdue v. Crocker National Bank (1985) 38 Cal.3d 913, 926, 216 Cal.Rptr. 345, 353 ("contract of adhesion" will be denied enforcement if deemed unduly oppressive or unconscionable).

The above is not intended as an exhaustive list of possible APA exceptions. Further information concerning APA exceptions is contained in a number of previously issued OAL determinations. The Index of OAL Regulatory Determinations (available from OAL, (916) 323-6225) is a helpful guide for locating such information.

ATTACHMENT A  
(1 of 3)

The challenged rule in Request for Determination 87-005 is printed on BBSE letterhead, and provides, as follows:

PROPOSED REGULATIONS FOR COMPLETED COURSEWORK  
OR TRAINING IN CHILD ABUSE ASSESSMENT AND REPORTING

Below are proposed regulations adopted by the Board of Behavioral Science Examiners.

1807.2. Child Abuse Assessment Training Requirements

(a) All persons applying for a license or a renewal of a license as a marriage, family and child counselor or a clinical social worker on or after January 1, 1987 shall in addition to all other requirements for licensure, have completed coursework or training in child abuse assessment and reporting. The coursework or training in child abuse assessment shall consist of not less than 7 classroom hours and shall include training in each of the subject areas described in Section 28 of the Code. The coursework or training shall be:

(1) Obtained at an educational institution, or in an extension course offered by an institution which is accredited by the Western Association of Schools and Colleges, the Northwest Association of Secondary and Higher Schools, or an essentially equivalent accrediting agency as determined by the board or approved by the State Department of Education pursuant to Section 94310(b) of the Education Code; or

(2) Obtained from a statewide professional association representing the professions of psychology, social work or marriage, family and child counseling; or

(3) Obtained from or sponsored by a local, county, state or federal governmental entity.

(b) Every person applying for a license or licensed as a marriage, family and child counselor or clinical social worker shall submit documentation establishing that the applicant or licensee has completed the required training in child abuse assessment and reporting described in subsection (a). Such documentation shall be submitted with the first application for licensure or license renewal which occurs after January 1, 1987.

General Information

MFCC's and LCSW's whose licenses expire on January 31, 1987, or thereafter, will have to document compliance with above requirements in order to renew their licenses.

All individuals who submit applications for licensure after January 1, 1987 will have to document compliance with the above requirements in order to be licensed.

Those who already have an application on file, or who submit an application prior to January 1, 1987, will be required to document compliance the first time they renew their license.

Training must have been completed after January 1, 1983.

All licensees must comply with the required training in child abuse assessment and reporting. No licensee will be exempt from compliance with the provisions of Section 1807.2 (a) and (b) and Section 28 of the Code because all licensed marriage, family and child counselors and clinical social workers, regardless of the nature of their practice, are subject to the child abuse reporting laws.

The Board will only accept courses from providers who have met the requirements listed in Section 1807.2(a)(1) through (3). Out-of-state training which is obtained from an approved provider and which is certified to fulfill the specific requirements of Section 28 of the Business and Professions Code will be accepted.

This course should include the study of the assessment and method of reporting sexual assault, neglect, severe neglect, general neglect, willful cruelty or unjustifiable punishment, corporal punishment or injury, and abuse in out-of-home care. The training should also include physical and behavioral indicators of abuse, crisis counseling techniques, community resources, rights and responsibilities of reporting, consequences of failure to report, caring for a child's needs after a report is made, sensitivity to previously abused children and adults, and implications and methods of treatment for children and adults.

Upon application for initial licensure or upon renewal, certificate of completion shall be sent to the Board for review to ensure that the requirements of Section 1807.2 (a) and (b) have been met. Certification of completion should contain the following information:

SAMPLE

"This is to certify that \_\_\_\_\_(CSW)/  
(MFCC)/(MFCC/CSW Applicant) attended coursework/training in  
"Child Abuse Assessment and Reporting.  
Course was obtained at or sponsored by\_\_\_\_\_.  
The course was given on \_\_\_\_\_, consisted of \_\_\_\_ contact  
hours and was presented by \_\_\_\_\_.  
This course/training complies with the requirements of  
Section 28 of the Business and Professions Code.  
Date\_\_\_\_\_Signature \_\_\_\_\_  
Printed Name & Title \_\_\_\_\_

This is a sample of necessary information only, and should  
not be submitted as proof of completion of training.



ATTACHMENT B  
(1 of 2)

Business and Professions Code section 28 (Stats. 1985 c. 844, §1) provides in part:

§ 28. Child abuse assessment training

The Legislature finds that there is a need to ensure that professionals of the healing arts who have demonstrable contact with child abuse victims, potential child abuse victims, and child abusers and potential child abusers are provided with adequate and appropriate training regarding the assessment and reporting of child abuse which will ameliorate, reduce, and eliminate the trauma of child abuse and neglect and ensure the reporting of child abuse in a timely manner to prevent additional occurrences.

The Psychology Examining Committee and the Board of Behavioral Science Examiners shall establish required training in the area of child abuse assessment and reporting for all persons applying for initial licensure and renewal of a license as a psychologist, clinical social worker, or marriage, family, and child counselor on or after January 1, 1987. This training shall be required one time only for all persons applying for initial licensure or for licensure renewal on or after January 1, 1987.

All persons applying for initial licensure and renewal of a license as a psychologist, clinical social worker, or marriage, family and child counselor on or after January 1, 1987, shall, in addition to all other requirements for licensure or renewal, have completed coursework or training in child abuse assessment and reporting which meets the requirements of this section, including detailed knowledge of section 11165 of the Penal Code. The training shall:

- (a) Be completed after January 1, 1983.
- (b) Be obtained from one of the following sources:
  - (1) An accredited or approved educational institution, as defined in Section 2902, including extension courses offered by those institutions.
  - (2) An educational institution approved by the Department of Education pursuant to Section 94310 of the Education Code.
  - (3) A continuing education provider approved by the responsible board or examining committee.
  - (4) A course sponsored or offered by a professional association or a local, county, or state department of health or mental health for continuing education and approved by the responsible board.

(c) Have a minimum of 7 contact hours.

(d) Include the study of the assessment and method of reporting of sexual assault, neglect, severe neglect, general neglect, willful cruelty or unjustifiable punishment, corporal punishment or injury, and abuse in out-of-home care. The training shall also include physical and behavioral indicators of abuse, crisis counseling techniques, community resources, rights and responsibilities of reporting, consequences of failure to report, caring for a child's needs after a report is made, sensitivity to previously abused children and adults, and implications and methods of treatment for children and adults.

(e) All applicants shall provide the appropriate board with documentation of completion of the required child abuse training.

The Psychology Examining Committee and the Board of Behavioral Science Examiners shall exempt any applicant who applies for an exemption from the requirements of this section and who shows to the satisfaction of the committee or board that there would be no need for the training in his or her practice because of the nature of that practice.

(See Statutes 1985, chapter 844, section 1.)

ATTACHMENT C

Subsequent to the issuance of the proposed rule and accompanying material, BBSE's formally adopted Title 16, CAC, Section 1807.2, was filed with the Secretary of State, effective May 7, 1987, providing:

All persons applying for a license or a renewal of a license as a marriage, family and child counselor or a clinical social worker shall in addition to all other requirements for licensure, have completed coursework or training in child abuse assessment and reporting and shall submit documentation thereof to the board. The coursework or training in child abuse assessment and reporting shall consist of not less than 7 classroom hours and shall include training in each of the subject areas described in Section 28 of the Code. The coursework or training shall be:

(a) Obtained at an educational institution, or in an extension course offered by an institution which is accredited by the Western Association of Schools and Colleges, the Northwest Association of Secondary and Higher Schools, or an essentially equivalent accrediting agency as determined by the board or approved by the State Department of Education pursuant to Section 94310.2 of the Education Code; or

(b) Obtained from a statewide professional association representing the professions of psychology, social work or marriage, family and child counseling; or

(c) Obtained from or sponsored by a local, county, state or federal governmental entity.

(d) Completed after January 1, 1983.

(See new section filed May 7, 1987; operative May 7, 1987, California Administrative Notice Register 87, No. 20.)